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No. 87-1338

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHARLES TRUMAN MILLWOOD,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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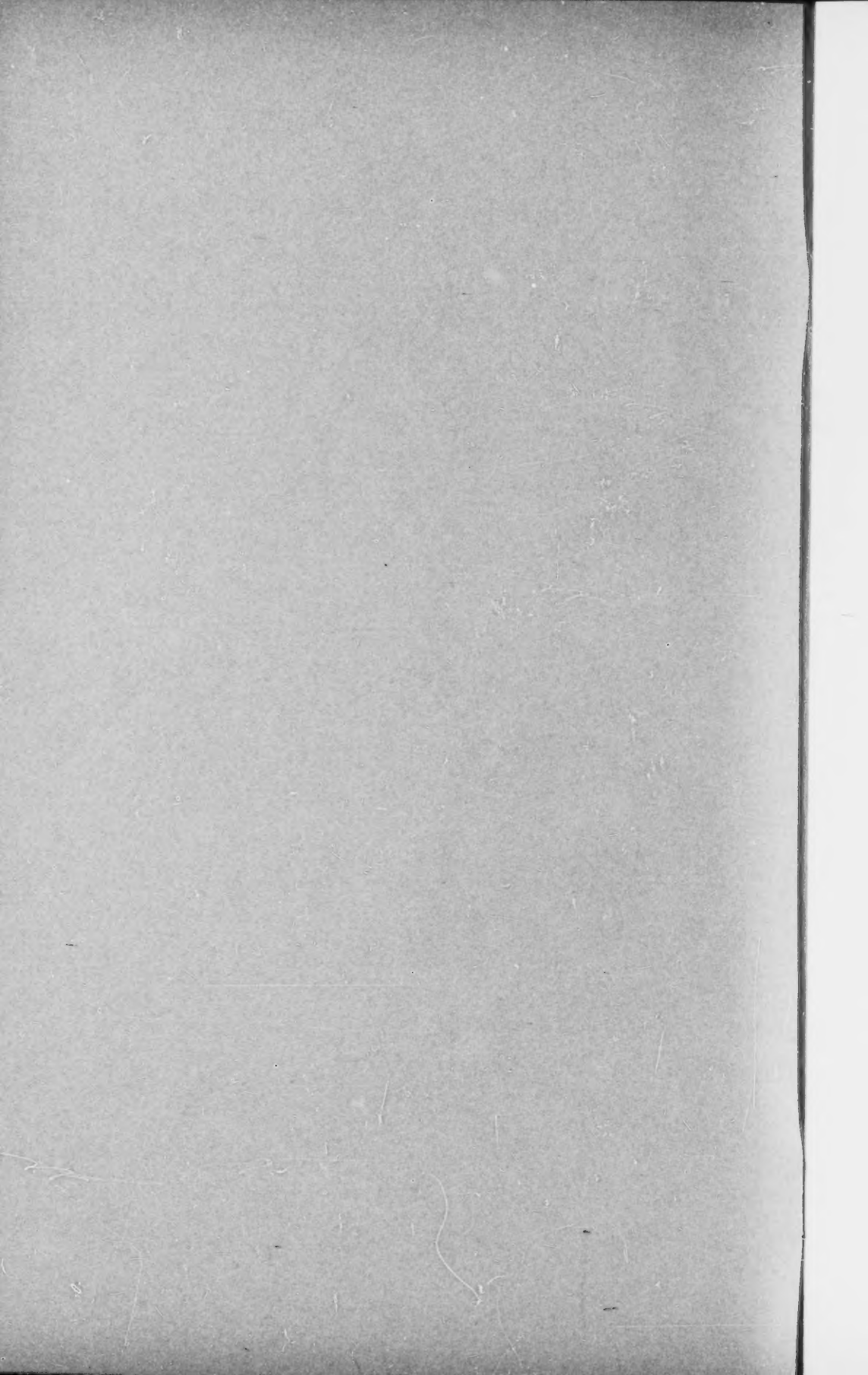
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QUESTION PRESENTED FOR REVIEW

May an anonymous tip furnish
reasonable suspicion for an investigatory
Terry stop?



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STATEMENT OF THE CASE

Petitioner, Charles Truman
Millwood, was convicted by a jury in the

Circuit Court for Washington County, Maryland of possession of methamphetamines, intent to distribute methamphetamines, unlawfully bringing methamphetamines into Maryland, and unlawful transportation of a handgun. On July 9, 1987, the Maryland Court of Special Appeals affirmed Petitioner's conviction. See Petitioner's Appendix. On December 9, 1987, the Maryland Court of Appeals denied Petitioner's petition for writ of certiorari.

This Court requested that the State of Maryland file a response to the petition for writ of certiorari filed herein on or before April 13, 1988. By letter dated April 13, 1988, this Court granted Respondent an extension of time within which to file its brief in opposition to the petition for writ of

certiorari to and including May 13, 1988.

STATEMENT OF FACTS

At 4:45 p.m. on January 31, 1986, an anonymous call was received at the Hagerstown barracks of the Maryland State Police. The call was recorded and played for the trial court at the suppression hearing. The anonymous caller told police that a 1965 Ford Thunderbird, purple or lavender in color, was traveling south on Interstate 81 with a shipment of methamphetamines. The car was due to cross the Maryland border in one to two hours.

In the auto, stated the informer, would be a white male and a white female. The male would be wearing an "Indiana Jones" type hat. The drugs in question were to be found either taped

inside the grill of the vehicle or in the trunk. The informant also said that the vehicle would have Pennsylvania license plates and would not be registered to the driver.

At about 5:50 p.m. on the same evening, police spotted a lavender Thunderbird,¹ approximately 1965 vintage, traveling south on Interstate 81. Following the auto, police observed that it was indeed a mid-sixties Thunderbird, had Pennsylvania license plates, and there were two heads visible in the car. Police then pulled the car over and further verified that (1) it was a 1965 Thunderbird, (2) lavender or light purple in color, (3) with

¹ Contrary to Petitioner's assertion, police did verify the color of the automobile before the stop. See Millwood v. State, Petitioner's Appendix at 4.

Pennsylvania tags, (4) occupied by two persons -- a white female and a white male, and (5) the white male was wearing an "Indiana Jones" hat.

Police frisked the driver and told him why he had been stopped. They then proceeded to search the trunk of the car and found there a large quantity of drugs.

REASONS FOR DENYING THE ISSUANCE
OF A WRIT OF CERTIORARI

AN INVESTIGATORY TERRY
STOP MAY BE BASED UPON
THE CORROBORATED
INFORMATION OF AN
ANONYMOUS INFORMANT.

In seeking this Court's review of his case, Petitioner asserts¹ that "the Court of Special Appeals of Maryland... has decided a most important question of federal law involving the Fourth Amendment," to wit, "whether it is reasonable for a police officer to make

an investigatory stop of a motor vehicle on information received solely from an anonymous telephone tip." Petitioner's Brief at 7.

To buttress further his contention that this is somehow a live issue, Petitioner asserts that "state and federal courts are in disagreement as to whether an anonymous tip will justify an investigatory stop." Id. at 9. Petitioner also relies upon Jernigan v. Louisiana, 446 U.S. 958 (1980), where Justice White, dissenting from the denial of certiorari, stated: "We have not directly decided whether an anonymous tip may furnish reasonable suspicion for a stop and frisk."

Petitioner has failed to notice the one element common to the cases he cites suggesting that an anonymous tip may

not, in any circumstance, form the basis for a Terry stop: all of those cases were decided before this Court's seminal decision in Illinois v. Gates, 462 U.S. 213 (1983).

In Gates, this Court squarely held that an anonymous tip, when properly corroborated, may form the basis for a finding of probable cause to search. This being so, it would seem that the Eighth Circuit is correct in observing:

In view of the Supreme Court's holding in Illinois v. Gates, . . . that probable cause may exist in cases involving anonymous informants based on the "totality of the circumstances," we cannot agree that an anonymous tip alone can never support a reasonable, articulable suspicion of criminal activity.

United States v. McBride, 801 F.2d 1045, 1047 (8th Cir. 1986), cert. denied, ____ U.S. ____, 107 S.Ct. 1325 (1987). See also United States v. Gomez, 776 F.2d 542, 546 (5th Cir. 1985) (an anonymous informant's tip may give rise to ~~a~~ reasonable suspicion when sufficiently corroborated even with a number of innocent details); United States v. Porter, 738 F.2d 622, 625 (4th Cir.) (en banc) (an informant's tip can provide the justification for a Terry stop even if the informant's reliability is unknown), cert. denied, 469 U.S. 983 (1984); United States v. White, 648 F.2d 29, 41 (D.C. Cir.) (when the credibility of an anonymous tipster is corroborated by observations by the responding officer, that tip may provide a legitimate basis for an investigatory

stop), cert. denied, 454 U.S. 924 (1981);² United States v. Andrews, 600 F.2d 563, 569 (6th Cir.) (information from an unknown informant will support a stop if sufficiently detailed and/or corroborated), cert. denied, 444 U.S. 878 (1979).

Certainly, any question regarding the per se unreliability of an informant's tip has been laid to rest by Gates. The law is clear; information from an anonymous tipster must be evaluated on a individualized basis under the totality of the circumstances. Petitioner's question

² Justice White dissented from the denial of certiorari for the same reasons expressed in Jernigan, namely, whether an anonymous tip may furnish reasonable suspicion for an investigatory stop. White, however, preceded Gates.

thus narrows to whether, on the facts of this case, the anonymous tip was adequately corroborated.

Here, the informant's tip specified that an unusual twenty-year-old car of a distinctive make and color would be traveling a specified route at a given time. Police knew that the car would bear Pennsylvania license plates. Officers had a description of the car's occupants, including the type of hat one would be wearing. This is remarkably similar to the information given by the anonymous informant in Gates,³ which,

³ In Gates, police were in receipt of an anonymous handwritten letter which read in part as follows: "This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums. Most of their buys are done in Florida. Sue his wife drives their car (Continued)

when verified by police, gave probable cause to search the Gateses' auto.

On the facts of this case, police had ample cause to conduct an investigatory stop of Petitioner's car.⁴ Before officers stopped the car, they were able to corroborate the make, model, and color of the car; that it had Pennsylvania license plates; and that it

to Florida, where she leaves it to be loaded up with drugs, then Lance flies down and drives it back. Sue flies back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back. At the time Lance drives the car back he has the trunk loaded with over \$100,000.00 in drugs. Presently they have over \$100,000.00 worth of drugs in their basement." 462 U.S. at 225.

⁴ In fact, the State has consistently maintained, and continues to maintain in this Court, that the anonymous tipster's information was sufficient to support full probable cause and a search under the doctrine of Carroll v. United States, 267 U.S. 132 (1925).

had two passengers. Also, and of particular importance, is the fact that the officers were able to corroborate the informant's assertion that the Thunderbird would cross the Maryland border on Interstate 81 at a certain time. As the Maryland Court of Special Appeals noted: "It is highly unlikely that one not intimately familiar with the car and its occupants -- a mere casual observer -- could have foretold the entry of the Thunderbird into Maryland one or two hours beforehand." Petitioner's Appendix at 28. The Gates opinion stressed the importance of an informant's ability to supply detailed information not generally available and to predict future actions of the suspects. 462 U.S. at 245.

This Court in Gates expressly rejected the notion, argued by Petitioner here, that because only "innocent" details could be corroborated by police, an anonymous informant's tip could not provide the basis for a showing of probable cause. Id. at 243 n.13. Likewise, in the establishment of reasonable suspicion for a Terry stop, it is "immaterial that the details corroborating an informant's tip are as consistent with innocent conduct as with illegal activity." United States v. Reivich, 793 F.2d 957, 960 (8th Cir. 1986).

CONCLUSION

The instant petition for a writ of certiorari presents this Court with an unremarkable search and seizure case of interest only to Petitioner. It is firmly established that information from anonymous tipsters must be evaluated on an individualized basis. When properly corroborated, such information may support a finding of probable cause or reasonable suspicion. Granting a writ of certiorari will neither serve the public interest nor will it further clarify any relevant point of law.

Respectfully submitted,

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